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FOR COMMENT**

OVERVIEW OF COMMERCIAL LAW IN IRAQ

THE FOLLOWING PAPER DESCRIBES THE COMMERCIAL LEGAL ENVIRONMENT OF IRAQ. IT IS PRESENTED IN DRAFT FORM, BASED ON PUBLIC SOURCES AVAILABLE IN ENGLISH. THE PAPER WAS PREPARED WITHOUT THE BENEFIT OF ADVICE FROM COUNSEL QUALIFIED TO PRACTICE LAW IN IRAQ, OR WHO OTHERWISE HAVE EXPERIENCE WORKING IN PRIVATE OR GOVERNMENT PRACTICE IN IRAQ DURING THE LAST DECADE.

ACCORDINGLY, THE INFORMATION IN THIS PAPER DOES NOT CONSTITUTE LEGAL ADVICE, AND IT IS NOT INTENDED, NOR SHOULD IT BE USED, AS A SUBSTITUTE FOR SPECIFIC LEGAL ADVICE FROM QUALIFIED LEGAL COUNSEL. THE U.S. GOVERNMENT DOES NOT WARRANT THE ACCURACY OF THE INFORMATION IN THIS PAPER, AND URGES THOSE INTENDING TO DO BUSINESS IN IRAQ TO CONSULT WITH QUALIFIED LEGAL COUNSEL.

NONETHELESS, GIVEN THE LACK OF INFORMATION ON COMMERCIAL LAWS IN IRAQ, WE ARE MAKING THIS DRAFT PAPER AVAILABLE TO THE PUBLIC AS A SERVICE TO THE U.S. AND INTERNATIONAL BUSINESS COMMUNITIES.

THIS PAPER WAS PREPARED BY THE OFFICE OF THE CHIEF COUNSEL FOR INTERNATIONAL COMMERCE IN THE OFFICE OF GENERAL COUNSEL AT THE U.S. DEPARTMENT OF COMMERCE. THE PUBLIC SOURCES ON WHICH THE PAPER RELIES ARE LISTED IN FOOTNOTES. WE INVITE COMMENTS ON ALL ASPECTS OF THIS PAPER AND WE ENCOURAGE PERSONS WITH KNOWLEDGE OF IRAQI COMMERCIAL LAWS TO SUBMIT INFORMATION ON UPDATED LAWS, TRANSLATION ERRORS, ADDITIONAL LEGAL SOURCES, AND ANY OTHER INFORMATION RELEVANT TO THIS TOPIC. AS NEW AND MORE ACCURATE INFORMATION BECOMES AVAILABLE, WE INTEND TO UPDATE THIS PAPER AND TO POST IT ON THIS WEBSITE.

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ORGANIZATION OF THIS PAPER:

PART I PROVIDES A BRIEF EXECUTIVE SUMMARY OF THE PAPER.

**PART II GIVES SOME HISTORICAL BACKGROUND FOR THE DEVELOPMENT OF
COMMERCIAL LAW IN MODERN IRAQ.**

**PART III DESCRIBES CURRENT IRAQI COMMERCIAL AND RELATED LAWS AS
FOUND IN PUBLIC PRIMARY AND SECONDARY SOURCES AVAILABLE IN
ENGLISH.**

THESE PARTS ARE DRAFTED SO THEY CAN BE USED INDEPENDENTLY.

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I. EXECUTIVE SUMMARY

Iraq has a long and distinguished history as a center of Islamic jurisprudence. Its Civil Code, which was enacted in 1951 and became effective in 1953, is still the core of its commercial legal system. This Code is a sophisticated mixture of Islamic and European legal concepts. In fact, its basic contract provisions should be recognizable and usable by any company which does business in the Middle East today.

However, in the past few decades the Hussein regime brought into effect a number of legal provisions which may create problems for traders and investors doing business in Iraq. The brief list below is supplemented by more detailed discussion in Part III of this paper.

- A. The Iraqi Constitution prohibits private ownership of “national” resources and the “basic means of production.”
- B. The Iraqi Constitution prohibits foreign ownership of “immobile” property.
- C. The Iraqi Companies Law prohibits investment in, and establishment of, companies in Iraq by non-Arab foreigners.
- D. The Iraqi Commercial Agency Law requires that anyone representing another person or company in a commercial transaction must be of Iraqi nationality and be “fully loyal to his homeland.”
- E. Several Iraqi laws and regulations contain elaborate and probably time-consuming registration and/or licensing requirements for commercial companies, agents, distributors, branches, representative offices, and intellectual property rights. These requirements may include “loyalty” oaths and “Arab Boycott of Israel” certifications.
- F. Iraqi regulations require that the government license and inspect all goods coming into and going out of the country.
- G. U. S. copyright owners have no access to Iraqi copyright protection since the U.S. and Iraq are not members of any of the same copyright treaties.
- H. Iraq has no antitrust or competition law.
- I. Iraqi law does not require the recognition or enforcement of court judgments or arbitral awards from non-Arab countries.

II. THE HISTORICAL BACKGROUND FOR MODERN IRAQI COMMERCIAL LAW

A. Early Islamic Jurisprudence

Islamic political, social, and legal systems were introduced into Iraq after the Persian conquest in 637 A.D.¹ As traditions of the various local communities were gradually incorporated into the Islamic legal system, Iraq developed into an active center of early Islamic jurisprudence. Jurists in Iraq participated in systemizing and codifying Islamic laws, which were derived primarily from the Qur'an (holy book) and the Sunna (teachings of the prophet). For matters not explicitly covered by the Qur'an or the Sunna, jurists further formulated laws through analogies based on these two sources, and on consensus formed among scholars of different schools of Islamic thought.² In addition to these four primary sources, two other concepts gained acceptance as additional sources of Islamic law: preference (similar to equity) and public interest.³

The term "Shari'a" is now used to denote the overall Islamic jurisprudence described above, encompassing Islamic religious law, customary law, and administrative practices in light of Islamic teachings.⁴ Although different interpretations of Shari'a exist according to various schools, some general themes relating to its commercial aspects can be identified. Shari'a is distinguished from Western legal traditions by its dual prohibitions against illicit gain through *riba* (usury) and *gharar* (speculation). Other notable commerce-related features of traditional Shari'a include the failure to recognize time as an extinguisher of legal rights (thus, there is no concept of a statute of limitations) and the extensive coverage of the law of contracts including its ethical aspects.⁵

B. The Ottoman Empire

From around the 12th century until the Ottoman occupation beginning in 1534 A.D., Iraq was exposed to numerous invasions and changes in rule, and many scholars came to believe that no

1 Ibrahim Al-Wahab, *The Legal System of Iraq and the Continuity of Islamic Law*, in LAW AND THE ISLAMIC WORLD PAST AND PRESENT 23, 23-24 (Christopher Toll and Jakob Skovgaard-Petersen, eds., The Royal Danish Academy of Sciences and Letters, 1995) at 24.

2 Of the four main schools of Sunnite Islam, legal scholarship in Iraq was and is dominated by the Hanafi. (The three other schools are the Hanabali, Maliki, and Shafi'i, each of which evolved within distinct geographical boundaries.) Shi'ite Islam, the other branch of Islamic jurisprudence, also had and continues to have followers in Iraq. P. Nicholas Kourides, *Traditionalism and Modernism in Islamic Law: a Review*, 11 COLUM. J. TRANSNAT'L L. 491, 494 n.16 (1972).

3 Al-Wahab, *supra* note 1 at 26.

4 NORMAN ANDERSON, LAW REFORM IN THE MUSLIM WORLD (1976). See also M. Sa'id Al-'Ashmawi, *Shari'a in the discussion on secularism and democracy*, in LAW AND THE ISLAMIC WORLD PAST AND PRESENT 133 (Christopher Toll and Jakob Skovgaard-Petersen, eds., The Royal Danish Academy of Sciences and Letters, 1995).

5 H.S. Shaaban, Note, *Commercial Transactions in the Middle East: What Law Governs?* 31 LAW & POL'Y INT'L BUS. 157, 164, 171 (1999).

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further understanding of the early Islamic teachings was possible. The flexible evolution of the Islamic legal system through continual juridical development came to an end. Attempts to make changes to the law became considered “evil innovation” and were generally found unacceptable.⁶ In time, a division occurred (which continues to this day) between Islamic traditionalists, who believed that all law must conform to the eternally valid rules laid down by the will of God, and Islamic modernists, who believed that “the will of God was never expressed in terms so rigid and comprehensive as the classical doctrine maintains.”⁷

This state of legal affairs remained virtually unchanged until, under the influence of Western European legal theory, the Ottomans began to adopt a series of reforms of the Islamic legal framework in the early 19th century. Under the modifications implemented by the Ottoman Empire, many new laws were based on French (and occasionally German and Swiss) models in areas of commercial, criminal, and maritime law and procedure.⁸ Western-style laws continued to be adopted on an ad hoc basis until an Ottoman Civil Code (the “Majalla”) was enacted in 1877.

The Majalla, the first attempt to completely codify Shari’a, was created to preserve Islamic jurisprudence in light of these reforms.⁹ Consequently, the Majalla is mostly derived from Islamic civil law established prior to the reforms.¹⁰ In areas the Shari’a law did not cover, however, including many commercial matters other than contracts, the Majalla prescribed the continuation of Western-based laws previously adopted by the Ottomans.¹¹ It was during this era that additional courts founded on the French model were established, beginning a separation between Shari’a courts, which became limited to family matters, and different courts for other civil, commercial and criminal matters. A tri-level system was set up, consisting of Courts of First Instance, Courts of Appeal, and the highest level Court of Cassation, located in Istanbul.¹²

C. The Twentieth Century

During World War I, the British occupied Iraq and in 1915 began the introduction of yet another

6 Al-Wahab, *supra* note 1, at 27.

7 Daoud L. Khairallah, Lecture on Religion and the Obstacles to Legal and Institutional Change in the Arab World at Harvard University Law School (March 5, 2003).

8 *Id.* The readiness of the Ottoman Empire to adopt European legal systems, and often direct translations of Western laws, was partially a reaction to the theoretical immutability of Islamic law and the desire of Muslims to modernize their criminal and commercial laws. See P. Nicholas Kourides, *The Influence of Islamic Law on Contemporary Middle Eastern Legal Systems: The Formation and Binding Force of Contracts*, 9 COLUM. J. TRANSNAT’L L. 384 (1970).

9 The provisions in the Majalla are derived from Islamic law based on the Hanafi school. *Id.*

10 Al-Wahab, *supra* note 1, at 27. See also Kourides, *The Influence of Islamic Law on Contemporary Middle Eastern Legal Systems*, *supra* note 8, at 399.

11 Al-Wahab, *supra* note 1, at 27.

12 *Id.*

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legal system based on British laws in some parts of the country.¹³ During the British Mandate many old laws, particularly commercial laws, were replaced under British direction.¹⁴ However, when Iraq gained independence in 1932, the conditions under which those laws had been enacted had again changed dramatically, and there was perceived to be a need for modernization of the legal system in general and of the commercial laws in particular.

In 1933, jurists met in Iraq to study revision of the legal system. However, opposition from religious leaders who believed that Islamic laws should not be changed forced the legal scholars to abandon their mission before any findings could be made.¹⁵ Three years later, in 1936, a second attempt was made to discuss revision of the legal system and codification of the laws. This time the mission was more successful, resulting in the suggestion of two possible methods for the advancement of a new civil code: Iraq could either follow the precedents set by Egypt and Turkey, which had both adopted barely modified foreign civil codes, or it could draft a new code based on both traditional Shari'a law *and* on modern Western concepts.¹⁶ Through the influence of the prominent Egyptian jurist Abd al-Razzaq al-Sanhuri, the second proposal was embraced. As suggested by Sanhuri, a committee was formed to draft the proposed code based on the Majalla, as supplemented by relevant provisions in other Iraqi legislation, the case law of Iraq, and foreign codes and statutes. Modifications in these laws were to be made to conform to current circumstances, in consideration of the different schools of Islamic legal jurisprudence, as applicable.¹⁷

In the fall of 1936, the work of the committee was interrupted by a military coup that replaced the then-governing authority. In 1943, the committee was invited back by the new government to resume work on the project. By this time, the committee had access to an additional source of law, the draft of the new Egyptian Civil Code (also by Sanhuri).¹⁸ The draft of the Iraqi Civil Code was completed in 1946, enacted in 1951, and became effective in 1953.¹⁹

13 Zuhair E. Jwaideh, *The New Civil Code of Iraq*, 22 GEO. WASH. L. REV. 176, 176 (1953-1954).

14 Sabeh Al Mukhtar, *The Rule of Law in Iraq: Does It Exist?*, in *THE RULE OF LAW IN THE MIDDLE EAST AND THE ISLAMIC WORLD : HUMAN RIGHTS AND THE JUDICIAL PROCESS* (Eugene Cotran & Mai Yamai eds., 2000).

15 Jwaideh, *supra* note 13, at 178-179.

16 *Id.* Egypt had adopted the French Civil Code in two parts in 1875 and 1883, and Turkey had adopted the Swiss Civil Code in 1926.

17 *Id.* at 179-180.

18 *Id.* at 180. The Egyptian Civil Code (1949) was also a blend of Islamic and Western legal principles and was for this reason a useful resource in drafting the Iraqi civil code (more so due to the shared cultural similarities between the two Arab nations). However, the balance between the two sources of law in the two codes is somewhat different. Because the legal system being replaced in Egypt was largely based on French law, the new Egyptian Civil Code retained many Western-style (French) provisions already familiar to the Egyptians in order to maintain continuity. In Iraq, the legal background which served as a base from which to implement a new civil code was more in the Islamic tradition, and thus, only an estimated half of the Iraqi Civil Code provisions are in the Western-style. However, the two approaches are not incompatible and in some cases it is difficult to trace the origin of certain provisions to one source of law or the other. See Kourides, *supra* note 2, at 501.

19 See Jwaideh, *supra* note 13, at 180 and Al-Wahab, *supra* note 1, at 30 n.14.

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The basic legal structure in Iraq continues to follow that of a secular civil law country. Since the Iraqi Civil Code was enacted, various other commerce-related laws have been adopted (and amended) including a Code of Civil Procedure in 1969, a commercial code, companies laws, and laws relating to intellectual property rights. Many, though not all, of the commercial provisions of these new laws continue to be strongly influenced by Western legal concepts. In addition, various constitutions have been promulgated throughout the years which have contained provisions impacting commerce.

III. IRAQI COMMERCIAL LAW IN RECENT DECADES

A. Basic Overall Civil Law Structure

Civil laws related to the personal status of Iraqi people remain based largely on the Islamic Shari'a system, while commercial laws are based on a mixture of Islamic and European legal principles. Judicial precedence, usage, and custom form secondary sources of Iraqi law.

1. Constitutions

Since World War I, Iraq has seen several constitution-type laws. First, there was the Iraqi Basic Law in 1925, which was amended once before a major revision was enacted in 1943. In 1958 there was a short-lived Constitution of the Arab Federal State (with Jordan). In 1958 and 1964 national constitutions were adopted. Then a provisional or interim constitution was adopted in 1970.²⁰ Most recently, a 1990 draft or interim constitution, though apparently never formally adopted, was sometimes labeled by the Hussein regime as the currently effective constitution.²¹ (Since the article numbers and content of both the 1970 and 1990 constitutions are the same with respect to topics of concern in this paper, the terms "Interim Constitution" or "Iraqi Constitution" will be used in this paper to reference both documents until more complete information can be obtained.)

Article 1 of the Interim Constitution proclaims the promotion of the socialist system as one of the basic goals of the State. Article 12 gives responsibility to the State for planning, directing, and steering the national economy toward this purpose. Article 13 provides that "national resources" and the "basic means of production" are owned by "the People". (We invite comment on what is intended to be included in the terms "national"

20 Munther Al Fadhal, International Counsellor-at-Law, *available at* <http://www.eatlaf.com/inside/studies%20on%20the%20futur.htm>. See also CONSTITUTIONS OF THE COUNTRIES OF THE WORLD: IRAQ 9 (Albert P. Blaustein & Gisbert H. Flanz, eds., Oceana Publications, Inc., 1990).

21 Any claim to the validity of the 1990 Constitution is indirect, implied by the October 15, 1995, referendum amending provisions of this Constitution to establish Saddam Hussein as President of Iraq. International Constitutional Law, *available at* http://www.oefre.ch/law/icl/iz_index.html. The 1990 Interim Constitution (without changes apparently made in 1995) is available at http://www.oefre.unibe.ch/law/icl/iz00000_.html.

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resources and “basic means of production.” For example, we understand the term “national resources” to include mainly or only natural resources. We invite comment on this interpretation.) Article 16 allows for and governs private ownership of property, but Article 18 prohibits foreign ownership of immobile property (except as otherwise provided by law). (We understand “immobile” property to mean land, buildings and fixtures. We invite comment on this interpretation.)

2. Civil Code

The Civil Code, Law No. 40 of 1951, effective in 1953 (“Iraqi Civil Code”), as amended by the Companies Law No. 21 of 1997 (“Companies Law”),²² is the main source of commercial law, regulating general matters of business associations and of obligations, including the formation, discharge, and dissolution of contracts.²³ Modeled after the Egyptian Civil Code of 1949, the Iraqi Civil Code is a blend of principles from the Shari’a and European civil codes.²⁴ In fact, Article 1 of the Civil Code affirms that, in the absence of a relevant legislative provision, courts should look to customary law and practice, Islamic Shari’a law, and equitable principles, in that order, while relying “in all the foregoing” on jurisprudence in Iraq and in other countries whose laws are comparable to the laws of Iraq.²⁵

3. Commercial Code

The principal commercial code was promulgated in Law No. 30 of 1984. It regulates commercial matters pertinent to businesses, including commercial registration, company books and records, trade names, banking transactions (including commercial mortgages and current accounts), international sales, letters of credit, and bank guarantees.²⁶

22 Civil Code provisions other than the Companies Law of 1997 come from NICOLA H. KARAM, BUSINESS LAWS OF IRAQ, (Middle East Business Law Series, Graham & Trotman, 1990). The Companies Law No. 21 of 1997 replaced the earlier Companies Law No. 36 of 1983, although no changes were made on points of key concern in this paper. The Arabic text of the 1997 Companies Law was published in the Baghdad Al-Thawrah from August 25-September 8, 1997. A translation into English was done for the U.S. Government by the Foreign Broadcast Information Service (FBIS) office in Amman, Jordan. (Services and documents from FBIS are available only to U.S.

Government employees and authorized contractors.) See also, Basil Yousif, *Iraq*, LEGAL ASPECTS OF DOING BUSINESS IN THE MIDDLE EAST (Dennis Campbell, ed., Kluwer Law International Business Series, March 2002).

23 Khalid Issa Taha & Howard L. Stovall, *Looking Again At Iraq: Commercial Law Issues*, 20 NO. 2 MIDDLE E. EXECUTIVE REP. 9 (February 1997).

24 The civil codes of seven other Arab states—Algeria, Jordan, Kuwait, Libya, Syria, Sudan, and the U.A.E.—are also based to varying extents on the Egyptian Civil Code of 1949.

25 The Islamic law to be relied on is the law that most conforms with Iraqi customs, without limitation to a particular school of Islamic jurisprudence (see p. 3 of Part I of this paper). Iraqi Civil Code of 1951, Article 1(2). The laws of countries “whose laws are comparable to those of Iraq” include the civil codes and judicial decisions of Syria, Egypt, and France. Jwaideh, *supra* note 13, at 181.

26 Law of Commerce No. 30 of 1984 replaced Law No.149 of 1970 (as amended), except Part VI (on bankruptcy), and comes from KARAM, *supra* note 22.

4. Civil Procedure Code

The Civil Procedure Code, Law No. 83 of 1969, directs judicial processes in civil and commercial cases. Articles 251-276 cover rules on the arbitration of disputes, but do not mention enforcement of foreign arbitral awards.²⁷

B. Specific Commercial Law Topics

1. Contract Law

The Iraqi law of obligations or contracts is still very influenced by Shari'a, especially the Shari'a concept of protecting all parties from any risk of inappropriate gain or speculation.²⁸ Morality is not separated from contract law, and parties are required to act in a moral manner. Two ways in which these beliefs are molded into Iraqi commercial law are through the intertwined concepts of contracting with full knowledge and equivalence of benefits.

The Iraqi Civil Code first covers contracts generally in Book 1 (Articles 73-183) and then provides further detailed rules as to some particular types of civil contracts in Book 2, including contracts for sales, leases, the hire of services and suretyships.

a. Offers and Acceptance

Contracts in Iraq may be made for commodities or the use of commodities with or without consideration, or for a specified action.²⁹ An offer and acceptance creates a contract.³⁰ These expressions may be written, oral, or in any other form which leaves no doubt of mutual agreement.³¹ Article 82 of the Iraqi Civil Code states that during a "contractual session," an offer remains open until it is either rejected or revoked. The concept of a "contractual session" illustrated by these provisions, where both parties are aware of the moment when agreement is reached, is intended to carry out two aspects of Shari'a law: full knowledge and equivalence of benefits between parties during negotiations.³² Under Articles 85 and 86, an acceptance not conforming to all "essential matters" of an offer is not adequate to bind both parties, even if the agreement is in writing. Unless otherwise stipulated,

27 Taha & Stovall, *supra* note 23, at 13.

28 NAYLA COMAIR-OBEID, *THE LAW OF BUSINESS CONTRACTS IN THE ARAB MIDDLE EAST* 135 at 5 (1996).

29 Iraqi Civil Code, Article 74.

30 *Id.* at Article 77.

31 *Id.* at Article 79. *See* Article 81 on silence as acceptance.

32 *See* COMAIR-OBEID, *supra* note 28, at 5.

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a contract that leaves non-essential matters to be agreed upon at a later date is enforceable.³³

b. Validity

Two aspects of the Shari'a reappear in Articles 127-130: impossibility of performance causes a contract to be "nonexistent" and the object of obligation must at least have the possibility of existence (even if in the future). Contractual terms must be defined in such a way as to avoid uncertainty or speculation and "in accordance with public order and morals."³⁴ Great emphasis is placed throughout the provisions on describing the object of the contract in a manner negating "excessive ignorance." Article 128 renders null and void any such contract where the designation of the object is not adequate enough to negate "excessive ignorance."

Fraud alone will not cancel a contract. Rather, according to Articles 121 and 124, the complaining party must have suffered injury as a result of a contract concluded upon a fraudulent basis, without which fraud the claimant would not have become a party to the contract.³⁵ Other circumstances that, by affecting the mutuality of consent, may make a contract non-performable include one or both of the parties acting outside of its legal capacity, the presence of "valid" duress, or mistake.³⁶ Article 150 requires good faith in contracting.³⁷

c. Dissolution and Breach of Contract

If either party fails to perform, the other party may, after notice, demand rescission of the contract with right to damages. The court may extend the time limit for the debtor, or reject the demand for rescission if the non-performed part of the contract is "trivial."³⁸ The statute of limitations for bringing a case is generally fifteen years, although for certain specific instances this limit is reduced to one to five years.³⁹ Rescission may also be made by mutual consent under Articles 181-183.

33 Iraqi Civil Code, Articles 85, 86.

34 See COMAIR-OBEID, *supra* note 28, at 137. See also Iraqi Civil Code, Articles 74, 75, 127-130.

35 See also COMAIR-OBEID, *supra* note 28, at 139.

36 See Iraqi Civil Code, Articles 93-120.

37 *Id.*, at Article 150.

38 *Id.* at Articles 177, 178.

39 Fatima Akaddaf, *Application of the U.N. Convention on Contracts for the International Sale of Goods (CISG) to Arab Islamic Countries: Is the CISG compatible with Islamic law principles?*, 13 PACE INT'L L. REV. 1, 44 (2001). See Iraqi Civil Code, Articles 429-433.

d. Unforeseeable events and Force Majeure

Article 146 states that if, with the occurrence of an exceptional and unforeseeable event, an obligation becomes excessively burdensome so as to threaten “exorbitant” loss to a party, a judge, after considering all circumstances, may reduce the obligation owed to a reasonable measure. Any agreement to the contrary “shall be null and void.”⁴⁰ In addition, Article 168 provides for the payment of damages in cases where an obligee is unable to perform its obligation, unless the impossibility of the performance was “due to a cause beyond his control,” in which case the obligation is extinguished.⁴¹ Again, in Article 179, if the object of a contract for consideration has perished while still in the hands of its owner, whether by fault or by force majeure, the contract is rescinded, and any exchange made should be undone. However, Article 259 permits agreements that hold the debtor responsible for consequences of an unforeseen act and/or of a force majeure.

e. Damages

Under Article 169, if the amount of damages is not provided for in the contract, it will be estimated by the court. Damages may include reasonably anticipated lost profits if loss of profits is a natural result of nonperformance or delay. However, damages may not exceed the loss suffered except in cases of fraud or “grievous fault” and may be reduced if excessive.⁴² Penalty interests for the delay of payments of money, which generally start running upon the filing of a court claim, are imposed at four percent in civil matters and five percent in commercial matters. Parties may contract for different rates of such penalty interests up to seven percent; anything in excess of seven percent will be reduced and, if paid, must be refunded.⁴³

f. Debt/Interest

While special provisions concerning Islamic law-based agreements for profits from resale or trading joint capital, as well as contracts for loans, are found in the civil codes of some other Muslim nations (notably in the Jordanian Civil Code), equivalent provisions are not provided by the Iraqi Civil Code.⁴⁴ In fact, the main general reference to loans in the Iraqi Civil Code is found in Article 174, which

40 Iraqi Civil Code, Article 146. See also COMAIR-OBEID, *supra* note 28, at 142.

41 Iraqi Civil Code, Articles 168, 425.

42 *Id.* at Articles 169, 170.

43 *Id.* at Articles 171, 172.

44 *Id.*

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prohibits compound interest and states that the total amount of interest should never exceed the amount of capital, without, however, going counter to “the commercial rules of custom and usage.”⁴⁵ The charging of interest is otherwise allowed in Iraq.⁴⁶ The maximum interest rate appears to be (or have been) capped at seven percent, and any contracted-for terms exceeding this limit will be automatically reduced.⁴⁷ If parties do not agree on an interest rate, the loan will be deemed interest-free. There is no provision guaranteeing a specified deadline for repayment.⁴⁸

The Iraqi Civil Code allows the debt of an obligated party to be transferred to a third party guarantor under an agreement made between those two parties. Articles 339-374 regulate this process.⁴⁹

2. Companies Law

a. *Domestic Companies*

The Companies Law of 1997 amended the Iraqi Civil Code of 1951 and governed the types of companies allowed in Iraq, as well as their formation, management, and dissolution.⁵⁰ Article 6 authorizes four main types of companies:⁵¹

- i. joint stock: five or more shareholders permitting public participation; the liability of each is limited to the nominal value of his share
- ii. limited liability company: two to twenty-five shareholders; the liability of each is limited to the nominal value of his share
- iii. collective partnership: two to ten natural persons holding unlimited “joint and personal” liability
- iv. individual enterprise: a single person holding unlimited liability

Under Article 12, all shareholders, promoters, or partners must be Iraqi nationals or nationals of other Arab countries, who are treated as Iraqis for purposes of this

45 *Id.* At Article 174. See also COMAIR-OBEID, *supra* note 28, at 144. Differing articles relating to the charging of interest on particular types of contracts exist within various sections of the Code.

46 See COMAIR-OBEID, *supra* note 28, at 144.

47 Nicholas B. Angell, *Islamic and Western Banking (II)*, 18 NO. 1 MIDDLE E. EXECUTIVE REP. 9, 10-11 (January 1995). N.B. Article 175 provides that the legal rate of interest charged on current accounts “will vary according to fluctuations of the local market applicable.”

48 *Id.* See Iraqi Civil Code, Article 692.

49 COMAIR-OBEID, *supra* note 28, at 142.

50 Companies Law No. 21 of 1997, *supra* note 22. See also Yousif, *supra* note 22.

51 Companies Law No. 21 of 1997, Article 6. See also *Doing Business in Iraq*, Trade Partners UK [hereinafter Trade Partners UK], at www.tradepartners.gov.uk/iraq/doingbusiness/07_regulations/localrepresentation.shtml.

article.⁵²

b. *Foreign companies*

i. Joint Ventures

Foreign nationals (other than nationals of other Arab countries) are not permitted to either establish or acquire shares in Iraqi companies.⁵³ However, foreign nationals may participate in joint ventures (JVs) with Iraqi companies on a contractual basis for the completion of a specific project as long as they do not obtain any equity capital of the Iraqi company.⁵⁴ In Iraq, a JV has no legal personality and is not itself covered under the Companies Law (although both domestic and foreign companies are governed under this law). The JV may neither acquire nor issue shares to non-contracting parties. Maintaining their original legal identities, the partners to the JV are nonetheless held jointly and severally liable to third parties.⁵⁵

ii. Foreign Economic Establishments

Under provisions of the Companies Law No. 21 of 1997 and Regulation No. 5 of 1989 for Branches and Offices of Foreign Economic Establishments (Regulations for Foreign Establishments), foreign companies carrying out activities in Iraq as a result of an agreement with an Iraqi government agency or with certain companies wholly or partly owned by government entities are permitted to establish branch offices or representative offices in Iraq.⁵⁶ In fact, a company entering into a contract involving the construction or installation of “works” in Iraq with an Iraqi government client is required to set up a local branch office, which takes on a legal personality and may conduct business activities within the scope of the contract.⁵⁷ (We invite comment on what the term “works” includes.) Representative offices are not allowed to “carry out any business activity” except that involved in acting “as liaisons to collect

⁵² Companies Law of 1997, Article 12.

⁵³ *Id.*

⁵⁴ Taha & Stovall, *supra* note 23, at 14.

⁵⁵ Trade Partners UK, *supra* note 52.

⁵⁶ Regulation No. 5 of 1989 (provided by Iraqi Ministry of Trade), Article 1, *FIRSTLY*, available at www.uruklink.net/trade/english/elaw.htm.

⁵⁷ Saleh Majid, *Commercial Agencies and Distribution in Iraq*, 24 NO. 9 MIDDLE E. EXECUTIVE REP. 7 (September 2001). *See also* Regulation No. 5 of 1989, *supra* note 57, at Articles 2, 3.

information, purchase tender documents, and contact clients.”⁵⁸

The Regulations for Foreign Establishments further state that all companies permanently practicing in Iraq or having a contract to perform a specific activity (other than mere supply contracts) must submit written notice to the Registration of Companies Department in the Iraqi Ministry of Trade (Registrar) as soon as the contract is signed. The Registrar, in conjunction with other “concerned departments,” defines the criteria for determining whether a license will be required for each registered activity.⁵⁹ If a license is required, the foreign company must submit copies of the documents required under Article 4, including the application form, articles of association, registration certificate, latest financial statements and board of directors’ reports, certificates of compliance with the Arab Boycott of Israel, and any other documents requested by the Registrar.⁶⁰ The Registrar has 60 days in which to approve or disapprove the application, with a possible extension of 30 days, and must publish any approval. The license is to be issued within 15 days of publication, upon issuance of which the branch or office acquires the status of legal person.⁶¹ Any changes in daily or overall operation must be submitted to the Registrar for notice and approval.⁶²

Each branch or office must keep regular accounting records in Arabic, in conformance with the system referred to in Article 201 of the Companies Law No. 36 of 1983.⁶³ Liquidation procedures, to be completed within 60 days of termination of the contract, also require notice and approval by the Registrar and other concerned authorities, and are covered by Articles 15 and 16 of the Regulations for Foreign Establishments.⁶⁴ Penalties provided in the Companies Law No. 39 of 1983 for violations of that law shall apply likewise to violations of the Regulations for Foreign Establishments.⁶⁵

58 Majid, *supra* note 58. See also Regulation No. 5 of 1989, *supra* note 57, at Article 1 and Trade Partners UK, *supra* note 52.

59 Regulation No. 5 of 1989, *supra* note 57, at Article 3. We have no further information concerning the criteria which determine whether a license is required.

60 N.B.: it is against U.S. law to provide any information about business relationships in response to a boycott request. See 50 U.S.C. App. § 2407 and 5 C.F.R. § 760.

61 Regulation No. 5 of 1989, *supra* note 57, at Article 5.

62 *Id.* at Article 6. See *id.* at Articles 11-14, 18, 20 for further reporting requirements.

63 *Id.* at Article 8. See also *id.* at Article 10 for auditing requirements. N.B.: This and other provisions referring to the Companies Law of 1983 may have been altered to refer to the later promulgated Companies Law of 1997.

64 *Id.* at Articles 15, 16. See also Companies Law No. 21 of 1997, Article 21 on penalties for delay.

65 Regulation No. 5 of 1989, *supra* note 57, at Article 22.

iii. Further Requirements for Foreign Companies

Iraqi law requires foreign companies wishing to establish bureaus in Iraq to use the “Provisions and Rules of Opening Branches and Offices of Foreign Companies” (“Rules”).⁶⁶ In addressing the terms for a branch opening, the Rules stipulate that the contracting period be for 90 days or more (excluding a “maintenance period”), the contracts be worth at least 80,000 Iraqi Dinars (“ID”), at least one of the minimum two permanent employees be of Iraqi nationality, and branch expenses be paid for with foreign currency from abroad if not officially provided for in the contract, among other requirements.⁶⁷

In addressing the terms for the opening of a representative office, the Rules stipulate confirmation by an Iraqi Commercial Bank of an amount no less than 15,000 ID per annum of transferred foreign currency to cover registration and operation expenses and provision of a guarantee of 10,000 ID to the Registrar of Companies in case of additional financial obligations, among other requirements. The Rules also provide for the continuation of legal entity status upon the foreign company’s obtaining a contract for which a branch does not have to be established.⁶⁸

The third paragraph, in accordance with the announcement No. 1033 published in the Ministry of Justice newspaper No. 3293 of May 2, 1990, permits the inflow of additional foreign currency in cash or transfer through a Government bank. This additional foreign currency may be used to open an account in foreign currency in order to make payments within Iraq using the foreign currency or to exchange the foreign currency into Iraqi Dinars. Any remaining Dinars may not be re-exchanged into foreign currency.⁶⁹

66 Provisions and Rules of Opening Branches and Offices of Foreign Companies (provided by Iraqi Ministry of Trade), *available at* <http://www.uruklink.net/trade/english/edalel.htm>.

67 *See id.* at *FIRSTLY*.

68 *See id.* at *SECONDLY*.

69 *See id.* at *THIRDLY*. Furthermore, two 1994 RCC Decrees (provided by the Federation of American Scientists) authorize the imposition of criminal punishments on anyone who sells or purchases, or conspires to sell or purchase, foreign currency outside of licensed offices. Decree No. 74 of 1994, *available at* http://www.fas.org/irp/world/iraq/docs/decree_074.htm and Decree No. 125 of 1994, *available at* http://www.fas.org/irp/world/iraq/docs/decree_125.htm.

c. Registration of Companies Department

The Registration of Companies Department of the Ministry of Trade (Registrar) administers the provisions of several Iraqi commercial laws and regulations, including Companies Law No. 21 of 1997, Commercial Agency Law No. 51 of 2000 (discussed below), and Revolutionary Command Council (RCC) Resolution No. 1344 of 1985 (amended by RCC Resolution No. 110 of 1998).⁷⁰ In addition to the duties of agency registration listed in the Agency law and Companies law, responsibilities of the Registrar include establishing national companies, amending company memoranda of incorporation, “legalizing” the minutes of meetings of boards of directors and general assemblies, organizing meetings for national companies in cases of shareholder disputes, inspecting the accounts and legal activities of companies, replying to concerns regarding the accounting and legal activities of companies, registering the branches and offices of foreign companies, and providing the government with requested information about any of the registered companies.

3. Agency Law

a. Iraqi Civil Code Provisions

The Iraqi Civil Code also includes provisions on general agency/distributorship law.⁷¹ Under the Iraqi Civil Code, an agent’s authority is generally limited by the terms of the agency agreement.⁷² The principal is liable for an agent exceeding this authority only if the principal gave the agent permission to do so.⁷³ An agent is required to account regularly to the principal, and may not appoint another agent without express permission.⁷⁴ Furthermore, the agent must act in the name of the principal when negotiating and concluding a contract in order that the principal and the third party have a direct, enforceable relationship. If the agent concludes a contract without disclosing his relationship with the principal and the principal does not subsequently approve of the transaction, the third party has no direct recourse to the principal.⁷⁵

The agent, if receiving fees or commissions, has a legal duty to exercise care at

70 Guide to Granting Commercial Agency Licenses (provided by Iraqi Ministry of Trade), “Introducing Preface,” available at <http://www.uruklink.net/trade/english/elaw.htm>.

71 Iraqi Civil Code, Articles 927-949. Because agency law applies to all types of commercial agencies, references to agents and agencies also cover distributors and distributorships. See Iraqi Civil Code, Article 927. See also Majid, *supra* note 58.

72 Iraqi Civil Code, Article 933.

73 *Id.* at Articles 944, 945.

74 *Id.* at Articles 936, 939.

75 *Id.* at Articles 942-944. See also Majid, *supra* note 58.

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least equal to that of an ordinary person. If the agent will receive no remuneration, the applicable legal standard of care is that which the agent exercises in his own affairs or that of an “ordinary person,” whichever is less.⁷⁶

An agreement of agency may terminate upon a number of occurrences, including the completion of a project specifically contracted for, the end of a contracted-for term, and in case of the death or forfeiture of the legal capacity of either the principal or agent.⁷⁷ While neither the Iraqi Civil Code nor the Agency Law (below) provides an agent with a general right to claim compensation upon termination, the Iraqi Civil Code does allow an agent in an agency for remuneration the right to claim compensation if he is terminated “at an inopportune time and without acceptable excuse,” and if he suffers damages as a result.⁷⁸ Although “inopportune time” is not defined, it has been interpreted to mean termination before the period of agency is over, or termination prior to completion of the terms or purpose of the agency.⁷⁹

b. Commercial Agency Law Provisions

These Iraqi Civil Code provisions are supplemented by the Commercial Agency Law No. 51 of 2000 (“Agency Law”).⁸⁰ The Agency Law regulates the operations of commercial agencies as well as relations between government entities and Arab or other foreign suppliers.⁸¹ Specifically, the law requires commercial agencies to be licensed, registered in a special register, and supervised.⁸² Commercial agencies are defined as “every business which is practiced in Iraq by an agent on behalf of a natural person or a corporate body abroad no matter whether it is a commercial agency, a commission agency or any other commercial agency provided for by the laws of commerce, companies and transportation.”⁸³ The Registrar is further authorized to consider “any commercial activity” as an agency.⁸⁴

⁷⁶ Iraqi Civil Code, Article 934.

⁷⁷ *Id.* at Article 946.

⁷⁸ *Id.* at Article 947.

⁷⁹ See Majid, *supra* note 58.

⁸⁰ The Commercial Agency Law of 2000 replaced the previous 1994 Agency Law, and does not apply to “scientific bureaus for pharmaceutical promotion” licensed under RCC Resolution No. 60 of 1998. Commercial Agency Law No. 51 of 2000 (provided by Iraqi Ministry of Trade) [hereinafter Agency Law], Article 22, available at www.uruklink.net/trade/english/elaw.htm.

⁸¹ Some issues covered by neither the Agency Law nor the Civil Code are left to the discretion of the parties, such as exclusivity. See Majid, *supra* note 58.

⁸² Agency Law, *supra* note 81, at Article 2. See also Sabah M. Ali Mahmoud, *Middle Eastern Commercial Law*, INT’L LAW. (prepared by Jim Phipps and Christopher H. Johnson) (2002).

⁸³ Agency Law, *supra* note 81, at Article 3:1.

⁸⁴ *Id.* at Article 8.

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The Agency Law further requires a party interested in appointing an agent to apply to the Registration of Companies Department (Registrar), the department designated to supervise the application of the law.⁸⁵ To obtain a license, agents should be of Iraqi nationality, reside in Iraq, be legally competent and at least 25-years-old, have not been convicted of an “honor-violating” felony, have a commercial office in Iraq, be enrolled in one of the chambers of commerce in Iraq and have a trade name, be “fully loyal to his homeland,” and not be a government official or have interests in the public service.⁸⁶ Agencies applying for licenses are subject to similar requirements. No more than three agencies per agent or corporate body may be registered.⁸⁷ The Registrar must make a decision on an application within 30 days, which may be appealed to the Ministry of Trade, whose decision is final.⁸⁸ Licenses are subject to a two-year renewal requirement, and ledgers are to be submitted yearly to the Registrar.⁸⁹

Iraqi government entities generally are prohibited from dealing with commercial agents. However, if dealing directly with foreign suppliers is not possible, Iraqi government entities may request approval to deal with or through an authorized agent.⁹⁰ Violators of this law may be subject to penalties, including fines and jail sentences.⁹¹

4. Trade laws⁹²

a. *Importing*

The import policies and programs of Iraq are controlled by the Ministry of Trade. All imports of the private sector are required to be licensed, except for some basic products for certain development projects. Imports financed by foreign exchange obtained by non-resident Iraqis require special licenses. Documents needed for imports include a commercial invoice (of no specific form, but entailing a detailed description of the product, country of origin, and name and address of the manufacturer), two copies of a packing list, and three copies of the bill of lading. A separate certificate of origin is generally not required, but the statement of such on the commercial invoice may be subject to certification by a recognized

⁸⁵ *Id.* at Article 13.

⁸⁶ *Id.* at Article 4.

⁸⁷ *Id.*

⁸⁸ *Id.* at Article 5:2.

⁸⁹ *See id.* at Articles 6, 10.

⁹⁰ *Id.* at Article 14.

⁹¹ *See id.* Articles 6, 15-21.

⁹² All information in this section was obtained from MuslimTrade Network, at <http://www.muslimtrade.net/tradeguideline/iraq/index.html>. *See also* 2002 *Index of Economic Freedom*, The Heritage Foundation, available at <http://cf.heritage.org/index/country.cfm?ID=69.0>.

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chamber of commerce.

Certain documents are required of exporters of goods bound for Iraq, including a certificate of analysis in Arabic and English for imports of products involving antibiotics, “compounds”, and other “preparations.” In addition, a “blacklist” certificate issued by an Iraqi consular officer stating the ship carrying the goods is not on the government’s “blacklist” is also required. (We invite comments on the terms “compounds,” “preparations” and “blacklist.”)

Customs duties are imposed through a single-column import tariff based on the Customs Cooperation Council Nomenclature. Most duties are applied on an ad valorem basis, although others are applied on a specific basis. In calculating ad valorem duties, the goods may be assessed duties based on their estimated value at the time of the transaction. Generally, the net weight of a product is used to evaluate specific duties, although the gross weight is also used for some items.⁹³

A tax of 0.5 percent is imposed on imports of capital goods, and a tax of 0.75 percent is imposed on the imports of consumer goods. All imports that are subject to a duty may also be subject to an additional surcharge.

Iraq is a member of the Arab Common Market, which has removed tariffs on manufactured products, with a few exceptions. In addition, the Inter-Arab Trade and Transit Agreement, to which Iraq is a signatory, provides for the duty-free entry of some non-industrial products and for the reduction of duties on certain industrial products between member states.

*b. Exporting*⁹⁴

Exports of certain goods are prohibited. All exports must be licensed through the “general company for exhibitions and trading services” in the Ministry of Trade. Exporters of products manufactured by public sector companies are required to repatriate 60 percent of their foreign exchange proceeds at certain specified government owned banks.

c. Product Standards

Product standards in Iraq seem to be controlled by the Central Organization for Standardization and Quality Control, which appears to be an independent government agency. Detailed information on substantive product standards has

⁹³ Despite the availability of this detailed description of the rules for Iraq’s customs duties, a current tariff schedule has not been located.

⁹⁴ See *supra* note 93.

not been found.

d. Free Trade Agreements

Agreements providing for the liberalization of trade through the elimination of restrictions and the granting of customs duties and tax exemptions within such zones have been concluded by the past government with Egypt and Syria. Trade in goods and products within these free trade zones is considered for local taxation purposes as internal trade rather than foreign trade.⁹⁵

5. Private Property Rights Generally

Article 13 of the Interim Constitution of 1990 provides that national [natural?] resources and basic means of production are owned “by the People” (i.e., the Iraqi government).⁹⁶ However, Article 16 guarantees rights of private ownership of property, as long as that ownership does not contradict general economic planning done by the state. In addition, property can be expropriated only when it is in the national interest, for just compensation in accordance with law.⁹⁷ Under Article 18, foreign nationals are prohibited from owning real estate, unless otherwise stipulated by law.⁹⁸

6. Intellectual Property Rights⁹⁹

a. Trademark Law

Law No. 21 of 1957, subsequently amended (replacing the Trademark Law No. 39 of 1931), established the current trademark registration system based on the local classification system.¹⁰⁰ In 2001, service marks also became registerable under the system. A trademark registration may be applied for by “anyone”¹⁰¹ and is valid for fifteen years beginning on the date of application, with the option of renewal. In order to be enforceable against third parties, the trademark must be published in the Official Gazette and entered into the records of the Trademark

95 Mahmoud, *supra* note 84.

96 Interim Constitution, *supra* notes 20 & 21, at Article 13.

97 Interim Constitution, *supra* notes 20 & 21, at Article 16.

98 Interim Constitution, *supra* notes 20 & 21, at Article 18.

99 All intellectual property rights materials are based on information provided by Abu-Ghazaleh Intellectual Property, at <http://www.agip.com>, unless otherwise indicated. For additional summaries of laws and fees, see ST&P Attorneys and Agents, <http://www.stplegal.com>.

100 According to the introduction in this 1957 Law, its provisions are identical to those of Egyptian, Libyan, and Kuwaiti trademark laws. Trademarks & Indications Law No. 21 of 1957 with amendments [hereinafter Trademark Law], at <http://www.agip.com>.

101 *Id.* at Article 4.

Office. A trademark becomes the transferable property of the person who registered it, whose proprietorship may not be challenged after five consecutive years of use.¹⁰² Although use of the trademark is not a requirement for filing an application or for maintaining its validity, a court may cancel the registration upon request of a third party if it is proven that the trademark has not been effectively used for a period of two years, and if no reasonable cause for the nonuse is found to exist. A trademark entered unlawfully or in bad faith may also be subject to court cancellation. Infringement or unauthorized use of a registered trademark is punishable by law.

b. Patent and Industrial Design Law

Patents and industrial designs are regulated by Law No. 65 of 1970. It typically takes at least two-three years once an application has been filed for a patent to be issued. A patent is valid for 20 years after completion of the application, subject to the annual payment of prescribed fees and the satisfaction of compulsory working requirements. The transfer or assignment of patent rights must be in writing and published in the Official Gazette.

Industrial design laws are similar to those of patents. Additionally required, however, is the submittal of two miniature design models made of plastic or metal. Upon annual payment of prescribed fees, a design registration is valid for seven years, with no provision for renewal.

Article 47 provides for the temporary granting of protection for inventions and industrial designs presented in national or international exhibitions. Officials of the Directorate General of Registration and Supervision of Companies are prohibited from submitting applications during their service or within five years of their leaving service.¹⁰³ Unauthorized use or imitation of registered patents and industrial designs is punishable by law.

c. Copyright Law

Copyright protection is governed by Law No. 3 of 1971.¹⁰⁴ Generally, this law applies to any type of literary, artistic, or scientific work presented in Iraq or by an Iraqi, in the name of the author (i.e., the person publishing the work), but not to

¹⁰² *Id.* at Articles 3, 18.

¹⁰³ Patents and Industrial Designs Law No. 65 of 1970, Article 48, available at <http://www.agip.com>.

¹⁰⁴ Iraq has also ratified the Arab Agreement of Authors' Copyright, in Law No. 41 of 1985. According to Article 33 of that Agreement, its provisions will triumph over national legislation only where such legislation does not provide "more extensive privileges" than the Agreement.

pseudonyms.¹⁰⁵ Works of foreign authors presented for the first time in a foreign country are covered by this law based on reciprocity.¹⁰⁶ The author enjoys exclusive publishing rights and rights to receive benefits from the work. However, the author may in writing transfer rights of financial exploitation.¹⁰⁷ Furthermore, upon death of the author, all rights succeed to the author's heirs or legatees.¹⁰⁸ Copyrights expire 25 years after the death of the author, provided that the protection period lasts at least 50 years from the date of publication; financial utilization rights expire after 30 years from the date of publication for authors who are commercial entities.¹⁰⁹ Copyright infringements are punishable by law.¹¹⁰

7. Investment Zones

According to Article 13 of the Interim Constitution, national resources and basic means of production are owned "by the People." Investment in these sectors is made directly by the Iraqi government's "Central Authority." As discussed above, foreign nationals (other than nationals of other Arab countries) are not permitted to directly invest in the establishment of, or to acquire stock in, an Iraqi company. Nor are foreign nationals allowed to own real estate in Iraq. However, it appears that an industrial zone was created to encourage foreign investments, particularly in petrochemicals and iron, steel, and galvanized pipe production.¹¹¹ In addition, RCC Resolution No. 170 of 1998 was adopted to enact the Free Zone Law No. 3 of 1998, which regulates the establishment of enterprises in industrial zones.¹¹² Within an industrial zone, it appears that capital investments and the profits derived from capital investments (presumably of Iraqi and other Arab nationals) are exempt from taxes, as are the incomes of non-Iraqis. Imports and exports may also be exempt from restrictions. Although we have found references to an Industrial Investments Law No. 20 of 1998,¹¹³ neither it, nor the Free Zone Law, nor further information on the investment zones has been located.

8. Antitrust Laws

No evidence has been discovered of any Iraqi antitrust or competition laws.

105 Copyright Law No. 3 of 1971, Articles 1, 21, 49, available at www.agip.com.

106 *Id.* at Article 49.

107 *See id.* at Articles 6, 7, 38, 41, 42.

108 *See id.* at Articles 18, 19, 23.

109 *See id.* at Article 20.

110 *See id.* at Articles 44, 45.

111 "Iraq General Information" section, The Eastern Company for Commercial Agencies, at <http://www.theeasterncompany.com>.

112 Yousif, *supra* note 22, at 3-4.

113 Gulf Legal Services, Ltd., available at http://gulf-law.com/iraq_judicial.html. *See also* Yousif, *supra* note 22, at 3-4.

C. Dispute Settlement

1. The Court System¹¹⁴

a. *Courts*

Under the Interim Constitution the judiciary is declared independent and “subject to no other authority save that of the law.” However, the judiciary is supervised by the Ministry of Justice and the Supreme Judicial Council (presided over by the President of the Court of Cassation). Law No. 160 of 1979 organizes the structure and functioning of the judiciary.

The judiciary is composed of the Civil Courts, Courts of Personal Status, and Criminal Courts. Civil Courts have jurisdiction over all cases involving civil and commercial matters, and matters of the personal status of non-Muslims. In them, cases of first instance are presided over by a single judge and may be appealed. Courts of Personal Status have jurisdiction over matters relating to the personal status of Muslims, including matters of family and inheritance. In addition to these courts, there are some non-commercial courts of specialized jurisdiction, supervised by executive organs other than the Ministry of Justice.

The three Court jurisdictions supervised under the Ministry of Justice are each further divided into a hierarchal system of Courts of First Instance, Courts of Appeal, and a Court of Cassation. The Courts of Appeals are divided into seven districts and are composed of three judges, presided over by the President of the Court of Appeal. Appellate decisions of civil and criminal matters may be appealed to the Court of Cassation located in Baghdad. The Court of Cassation, with a minimum of 15 judges, is presided over by a president and several vice presidents. It has three specialized chambers, and the full bench is the highest judicial authority in the land.

The Ministry of Justice usually appoints, assigns, promotes, and transfers judges in Iraq (the President of the Republic may also appoint judges). Appointees are usually recent law school graduates, who first serve as clerks and officers of the court before becoming judges.¹¹⁵ Lawyers in Iraq must be members of the Iraqi Lawyers’ Association and have graduated from an Iraqi law school or from another recognized school and have passed an Iraqi Lawyers’ Association exam.

¹¹⁴ All court system information is based on the *Country Profile* provided by the Programme on Governance in the Arab Region, United Nations Development Programme (hereinafter UNDP-POGAR), available at <http://www.undp-pogar.org/countries/iraq/judiciary.html>, unless otherwise indicated.

¹¹⁵ *Id.* See also Gulf Legal Services, *supra* note 114.

They are generally allowed to practice in any Iraqi court after an initial training period.

b. Civil Procedure

The Law of Civil Actions No. 83 of 1969 covers judicial proceedings in civil matters.¹¹⁶ It provides that any person, whether Iraqi or foreign, may bring suit in Iraq and may hire an Iraqi lawyer. Practicing lawyers of an Arab Lawyers' Association may be permitted to plead cases in Iraq on the basis of reciprocity and with approval by the Head of the Iraqi Lawyers' Association.¹¹⁷ Unless contrary to public order or morality in Iraq, an Iraqi court generally must uphold a contractual agreement between parties of "different domiciles" specifying the application of the laws of a foreign state to a contractual dispute.¹¹⁸

Enforcement/Execution Law No. 45 of 1980 regulates the enforcement of foreign judicial awards. As provided by Article 3 of that Law, such awards are enforceable only pursuant to Law No. 30 of 1928.¹¹⁹ Law No. 30 of 1928 applies to judgments entered in countries maintaining a bilateral agreement with Iraq, if named by Iraqi government-issued rules, and subject to a condition of reciprocity. Furthermore, if these qualifications are met, a foreign judicial award must then obtain court approval on numerous other restrictive conditions relating to notice, jurisdiction, finality of the judgment, and public policy concerns of the home country before it will be enforced.¹²⁰ In 1990, the Revolutionary Command Council (RCC) adopted Resolution No. 377 to enact "The Protection of Iraqi Property, Interests, and Rights In and Outside of Iraq Law No. 57 of 1990" ("Law No. 57"). Article 6 of this 1990 law states that Iraqi courts shall not consider suits brought against Iraqi persons or institutions in contradiction with "the provisions of the Law," further providing that Law No. 57 applies to the recognition and enforcement of foreign judicial decisions as well as arbitral awards.¹²¹

2. Arbitration

While Iraq is not a signatory to the New York Convention on the Recognition and

116 Yousif, *supra* note 22, at 4.

117 *Id.* citing Attorney Law No. 173 of 1965, Article 3. *See also* UNDP-POGAR, *supra* note 115..

118 Iraqi Civil Code, Articles 25, 32.

119 Saleh Majid, *Enforcement of Foreign Judicial and Arbitral Awards in Iraq*, MIDDLE E. EXECUTIVE REP. 8 (September 1995). According to this source, Article 12 of Law No. 45 of 1980 provides that the enforcement of a foreign judicial decision by an Iraqi court may also be required pursuant to an applicable international agreement. *Id.* at 17.

120 *Id.* See this article for further details of the Iraqi laws on the enforcement of foreign judicial awards.

121 *Id.* at 18. It is unclear whether "the Law" refers to Law No. 57 or law in general.

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Enforcement of Foreign Arbitral Awards (1958), it is a member of the Permanent Court of Arbitration at the Peace Palace, The Hague, Netherlands (1899). Iraq also has ratified the Geneva Protocol on Arbitration Clauses (1923, ratified by Iraq in 1926)¹²² and entered into a number of bilateral agreements and Arab League conventions on the enforcement of judicial and arbitral awards, including the Riyadh Convention for Judicial Cooperation (1983) and the Arab Convention on Commercial Arbitration (1992).¹²³

Article 37 of the Riyadh Convention, with a few exceptions, requires member states to recognize and enforce arbitral awards issued in other member states without looking at the merits of the case.¹²⁴ The Arab Convention applies to commercial disputes between any natural or juristic person, regardless of nationality, that is connected by means of commerce with any contracting government.¹²⁵ Its provisions recognize the right of parties to agree to commercial arbitration through the placement of such clauses in contracts or after a dispute has arisen, and the courts of each member country must enforce any award made by the stipulated Arab Centre for Commercial Arbitration, unless “contrary to public order.”¹²⁶ However, as of yet, the Arab Centre has not yet been established, limiting the present usefulness of the Arab Convention.

Iraq has no domestic law requiring the enforcement of foreign arbitral awards. While the Civil Procedure Code deals with Iraqi arbitration in general, it does not mention foreign awards.¹²⁷ Thus, companies wishing to have a foreign arbitral award enforced in Iraq must first get it recognized by a domestic court and then go through the process of enforcing that court decision through the Iraqi procedures for the enforcement of judicial awards.¹²⁸

122 The Geneva Protocol, to which the U.S. is not a party, recognizes the validity and effectiveness of an agreement to arbitrate between citizens of member states. Geneva Protocol on Arbitration Clauses, Article 1. In the opinion of Saleh Majid, Iraqi Legal Consultant and Advocate, Iraq, by its adherence to this Protocol, among other reasons, has forfeited the defense of sovereign immunity in an arbitration proceeding instituted under an agreement between the government and a foreign party of a member state. See Majid, *supra* note 120, at 17.

123 The text of the latter convention is available from Jurist International, available at http://www.jurisint.org/pub/01/en/doc/155_1.htm.

124 Majid, *supra* note 120, at 17.

125 Arab Convention on Commercial Arbitration (1992), Article 2.

126 *Id.* at Articles 3, 35.

127 Majid, *supra* note 120, at 8.

128 However, according to Saleh Majid, Law No. 57 of 1990 states that any foreign legal or arbitral decision shall not be enforced in Iraq if it is contrary to the provisions of that law, which could be interpreted as barring all suits for the enforcement of awards made in states that apply sanctions against Iraq. See *id.*

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D. Corruption/Ethical Issues

1. Public Officials

While no evidence has been found of a comprehensive Iraqi code of ethics or rules on financial disclosure for government officials, Article 30 of the Interim Constitution of 1990 provides that “public office is a sacred confidence” and calls for “honest and conscious obligations...in accordance with the rules of the constitution and the laws.” Articles 45 and 55 make each member of the Revolutionary Command Council (RCC) and the National Assembly, including the President of the RCC (i.e., the President of Iraq), answerable only to the RCC for violating the Constitution, breaking a constitutional oath, or behaving disgracefully in disrespect of his position.

Bribery of public officials is dealt with in Article II of RCC Resolution No. 160 of 1983 (as amended by Resolutions No. 703 of 1983 and No. 813 of 1986).¹²⁹ According to that law, public service employees who ask for or accept gifts, benefits, privileges, or promises of such on behalf of themselves or a third party are subject to fines and imprisonment. If committed during war, penalties for these crimes include life imprisonment and the seizure of assets. Those who offer unaccepted bribes are also subject to imprisonment. RCC Decree No. 120 of 1994 further provides for the punishment of persons convicted of embezzling State funds.¹³⁰

The enforcement of the above laws by legal departments, however, is restricted by State Consultative Council Law No. 106 of 1989, which bans the administrative judiciary from hearing all appeals based on “acts of sovereignty,” as found in presidential and RCC orders, decrees, and in materials of other agencies based on presidential instructions.¹³¹ Moreover, according to Article 40 of the Interim Constitution, RCC members, including the President of the RCC, have “full” immunity, and no measures can be taken against them without prior permission by the RCC. Under Article 38(d) and (f), the RCC may accuse, prosecute, and dismiss any member of the RCC, minister, or vice president.

National Assembly members, under Article 49, are immune from censure and prosecution while they are in session, unless expressly authorized by the RCC and except when caught in the act of committing a crime. National Assembly members are responsible to the Assembly for violating the Constitution, breaking an oath, or “behaving disgracefully.” Upon Presidential request, the National Assembly investigates

¹²⁹ This law has been updated as of October, 1990. Karam, *supra* note 22. No evidence has been found of amendments made after 1990.

¹³⁰ Provided by the Intelligence Resource Program of the Federation of American Scientists, *available at* <http://www.fas.org/irp/world/iraq/docs/index.html>.

¹³¹ Tariq Ali Al-Saleh, *Transnational Justice--Basis for Democratic Iraq*, THE JURIST (Iraqi Jurist's Association, 2002: “last issue”), *available at* <http://www.ija2.co.uk>.

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affairs of the prime minister, ministers, and other public employees, and may interrogate, dismiss from duty, retire, or refer them for trial as members see fit.¹³²

2. Commercial Agents

Commercial Agency Law No. 51 of 2000 discussed above indirectly addresses anti-corruption safeguards in business law. Intended to organize the business of commercial agencies in Iraq in a way that will help avoid exploitation and corrupt practices, this law requires commercial agents to be licensed, registered in a special register, and supervised. It also generally prohibits government agencies from dealing with commercial agents.¹³³

E. Transparency in the Legal System

Laws are publicly reported in the Iraqi Official Gazette: *al-Waqa'i al-Iraqiyya*. Article 64, paragraph (a), of the Interim Constitution states that laws are effective the date of publication, unless otherwise provided. Paragraph (b) of that Article provides: "Laws have no retroactive effect, unless otherwise stipulated. This exception does not include penal laws, tax laws, and fiscal fees." However, according to the Intelligence Resource Program of the Federation of American Scientists, a 1977 Law authorizes the President to refrain from publishing, or to restrict access to, laws in the "supreme interest of the State."¹³⁴ Most laws are nevertheless available to the public.¹³⁵

F. Banking and Finance

The Iraqi government officially controls all financial transactions. The Central Bank of Iraq, having been delegated responsibility for the country's monetary policy, issues and manages currency, establishes and maintains bank controls, and governs exchanges of foreign currency.¹³⁶ RCC Decree No. 98 of 1999 authorizes the circulation of, and opening of bank accounts with, foreign currency owned by Iraqis and non-Iraqis all of which is regulated by the Central Bank.¹³⁷ Non-residents may be permitted to take foreign currency, with added bank interest, out of the country. However, there appears to be convertibility restrictions relating to multiple exchange rates, controls of payments for invisible transactions and current transfers, proceeds from exports and/or invisible transfers, derivatives and other instruments, direct investments, and liquidations of direct investments.¹³⁸ The Iraqi government also owns two commercial banks, the Rafidain

132 UNDP-POGAR, *supra* note 115. See also Interim Constitution, *supra* notes 20 & 21, at Article 54.

133 See Ali Mahmoud, *supra* note 83.

134 Intelligence Resource Program, *supra* note 131, referring to Law No. 78 of 1977.

135 *Id.*

136 Economic Intelligence Unit, *Iraq Country Profile 2002*, available at <http://www.eiu.com>.

137 "Law and Regulations," Iraqi News Agency, available at <http://www.uruklink.net/iraqnews/elaw.htm>.

138 See Institute for Economic Policy, University of Cologne, available at <http://www.uni-koeln.de/wiso->

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Bank (which acts for the government in functions not undertaken by the Central Bank) and the Rasheed Bank.¹³⁹

All government agencies that in any way deal with public finances are subject to financial control by the Board of Supreme Audit (the Board).¹⁴⁰ According to the Board of Supreme Audit Law No. 3293 of 1990, the Board, having “moral personality, financial and administrative independence to perform all the legal acts required to fulfill its tasks,” is in charge of controlling and auditing accounts, providing guidance and regulations, and annually evaluating financial statements made by bodies subject to such financial control.¹⁴¹ The Chairman of the RCC may, for reasons of national security or defense, exempt specific cases from control of the Board, in which occurrence the case will be examined by an agreed-upon official.¹⁴²

G. Baghdad Stock Exchange¹⁴³

A Baghdad Stock Exchange (BSE) was established in 1992. As of early 2003, it listed 114 Iraqi companies (70 private companies and 64 mixed public/private companies).¹⁴⁴ Fifty brokers were permitted to trade on behalf of individual investors.¹⁴⁵ The exchange was open on Mondays, Wednesdays, and Saturdays from 9:30 a.m. to noon. It was not run electronically, but rather used markers and white boards hung on walls.¹⁴⁶ Trade volume typically approached US\$50,000 on most days,¹⁴⁷ with a total market capitalization of US\$137 million.¹⁴⁸ In past years, prices on the market have greatly fluctuated, rising 45 percent in 2000 and dropping 35 percent in 2001, before again increasing 24 percent late in 2002. As of March 7, 2003, the index for the BSE had gained 31 percent for 2003 year.¹⁴⁹

[fak/iwp/datenb/centralb.htm](http://www.fak/iwp/datenb/centralb.htm).

139 Economic Intelligence Unit, *supra* note 137. See also UNDP-POGAR *supra* note 115.

140 Board of Supreme Audit Law No. 3293 of 1990 (provided by Comptroller & Auditor General of India), available at <http://www.cagindia.org/mandates/Mandates/Iraq.html>.

141 *Id.* at Articles 2, 4.

142 *Id.* at Article 8.

143 Website (in Arabic), available at <http://www.uruklink.net/baghdadstock/index.htm>.

144 Middle East Media Research Institute (MEMRI), available at http://www.memri.de/uebersetzungen_analysen/temen/oekonomie/meer_12_12_02.html (December 12, 2002).

145 BLOOMBERG, “Baghdad Stocks Climb on Optimism,” *TAIPEI TIMES* 12 (March 7, 2003).

146 *Id.*

147 David Blair, “Prospect of War Boosts Stocks in Baghdad,” *LONDON DAILY TELEGRAPH*, reprinted in *THE WASH. TIMES* (March 3, 2003).

148 MEMRI, *supra* note 145.

149 David Blair, *supra* note 148.

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H. International Agreements on Trade and Investment

1. Iraq is a party to the Following International Commercial Organizations, Conventions, and Agreements:

Arab Convention on Commercial Arbitration
Arab Fund for Economic and Social Development
Arab Monetary Fund (AMF)
Commercial, Economic and Technical Cooperation Agreement Between the Government of the United States of America and the Government of the Republic of Iraq (signed on August 26, 1987; entered into force on October 27, 1987)
Council of Arab Economic Unity
Geneva Protocol on Arbitration Clauses
Global System of Trade Preferences
Inmarsat (global mobile satellite communications operator)
Intelsat (commercial satellite communications services provider of International Telecommunications Satellite Organization (ITSO))
International Labor Organization (ILO)
International Monetary Fund (IMF)
International Standards Organization (ISO)
Paris Convention for the Protection of Industrial Property (1967 Act) (1976)
Permanent Court of Arbitration (Hague)
Riyadh Convention for Judicial Cooperation
Treaty of Commerce and Navigation Between the United States of America and the Kingdom of Iraq (54 Stat. 1790; 9 Bevans 7 (1940))
World Customs Organization (WCO) (accession/ratification 1990)
WCO Technical Committee on the Rules of Origin (Observer)
World Intellectual Property Organization (WIPO)
United Nations
United Nations Convention on Contracts for the International Sale of Goods (CISG); (accession 1990; entry into force 1991)

2. Iraq is **NOT** a Party to the Following Important Commercial Conventions and Agreements

Berne Convention for the Protection of Literary and Artistic Works (Paris, 1971, as amended 1979)
Convention for the Protection of Producers of Phonograms Against Unauthorized Duplication of Their Phonograms (Geneva, 1971)
Convention on the Limitation Period in the International Sale of Goods

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(New York, 1974; amended by the Protocol of April 11, 1980)
Convention on the Recognition and Enforcement of Foreign Arbitral Awards
(New York, 1958)
International Convention for the Protection of New Varieties of Plants (UPOV
Convention, 1991)
International Convention on the Simplification and Harmonization of Customs
Procedures (Kyoto, 1974)
Patent Cooperation Treaty (PCT) (Washington, 1970, as amended 1979, and modified
1984 and 2001)
Protocol Relating to the Madrid Agreement Concerning the International Registration of
Marks (Madrid, 1989)
WIPO Copyright Treaty (Geneva, 1996)
WIPO Performances and Phonograms Treaty (Geneva, 1996)
World Trade Organization (WTO)